

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Broadcast Localism	)	MB Docket No. 04-233
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**COMMENTS OF THE  
AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS AND  
THE AMERICAN FEDERATION OF MUSICIANS**

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The American Federation of Television and Radio Artists (AFTRA) and the American Federation of Musicians of the United States and Canada (AFM) hereby submit the following comments in response to the Federal Communications Commission (FCC) Notice of Inquiry (NOI) Docket No. 04-233, adopted June 7, 2004 (“Notice”).

**I. INTRODUCTION / SUMMARY**

AFTRA submits these comments on behalf of nearly 80,000 performers, newsmen, announcers, disc jockeys, sound recording artists, and other broadcast professionals who are employed by, or whose performances are broadcast on, television and radio stations nationwide. The AFM submits these comments on behalf of over 100,000 professional musicians whose live music (in every genre and style, and in every size and type of venue) and recorded music performances form a critical part of local and national culture and entertainment.

By this Notice, the Commission seeks comment as to whether and how broadcast stations are fulfilling their core obligation to serve the interests and needs of local communities and what measures the Commission should take to ensure that broadcast stations operate to promote localism. Notice, Paragraph 7. Although AFTRA and AFM support this NOI, and applaud the Commission's reaffirmation that its "overarching goal" is to ensure that broadcast stations are responsive to the unique interests and needs of local communities, it must be repeated at the outset -- *media ownership matters*. It is simply impossible to discuss how to promote localism without consideration of the consolidated ownership patterns emerging throughout this country.

Promoting localism means ensuring that local communities can rely upon their local television and radio stations to deliver local news, which includes, among other things, local political coverage, local weather, and local community affairs. Promoting localism also requires that broadcast stations reflect and create opportunities for local artists and other forms of local self-expression. As was shown in presentation after presentation at the localism hearings sponsored by the Commission's Localism Task Force over the past sixteen months, the market forces created by the current, overwhelmingly consolidated broadcast media industry simply fail to provide the necessary incentives to promote these aspects of localism. Indeed, the market forces driving the broadcast industry today instead promote the opposite -- centralized, homogenized, and uniform programming conceptualized and operated without the input or participation of individuals who live in the local communities to be served.

In these comments, AFTRA and the AFM will document the problems that continue to proliferate today in broadcast markets nationwide. These include:

- (i) The widespread loss of genuine local news coverage;
- (ii) The virtual elimination of public affairs programming in local communities, particularly for under-served communities;
- (iii) The domination of centralized programming masquerading as local programming through insidious group owner innovations such as radio “voice-tracking,” so-called television “central casting,” and the imposition of national or regional “playlists;”
- (iv) The abdication by broadcast stations of their historic role in discovering and promoting local talent; and
- (v) The burgeoning of destructive “pay for play” business practices that are shutting local artists out of airplay, depriving audiences of emerging local artists, and ultimately squelching innovation in American music.

The present crisis demands regulatory reform. AFTRA and the AFM call upon the Commission to respond in five (5) ways. **First**, the Commission must adopt rules to specifically require stations to provide programming responsive to the needs of the particular communities where the stations are located. **Second**, the Commission must adopt rules that specifically address and prohibit the new destructive payola practices that control the radio and music industries today, and improve its existing procedures for enforcing existing payola and sponsorship identification rules. **Third**, the Commission must adopt a meaningful and effective license renewal process through which the Commission, with input by members of the local community, systematically evaluates the manner in which a station has served the public interest. **Fourth**, the Commission must encourage the development of LPFM. **Fifth**, and just as important, the Commission simply must reconsider the threat to localism inherent in its loosened media ownership

rules now enjoined by the Third Circuit,<sup>1</sup> and reverse its misguided effort to permit even more ownership consolidation.

Although the opportunities for rule-making to put “the consolidation genie back in the bottle” may be few, AFTRA and the AFM urge the Commission to adopt rules and meaningful enforcement mechanisms to reform the destructive practices that exist today in television and radio broadcasting.

## **II. BROADCAST STATIONS ARE FAILING TO PROVIDE LOCAL NEWS AND PUBLIC AFFAIRS PROGRAMMING TO LOCAL COMMUNITIES**

### **A. Local News Operations Have Been Eliminated Nationwide**

The Commission seeks comment on “the number of radio and TV stations that provide local news, the number that purchase their news from another entity or that produce news in regional or national hubs, and the number of local news personnel employed by radio and TV stations,” and how these numbers have changed over time. NOI, ¶17.

It is unquestionable that the number of radio and TV stations that provide original local news programming nationwide has dropped precipitously in the last few years, to the detriment of local communities. In market after market, AFTRA has seen news personnel downsized and news operations eliminated. Whereas local communities previously had the benefit of a variety of perspectives and views among their local television and radio stations and newspapers, they now, at most, may receive as few as one.

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<sup>1</sup> *Prometheus Radio Project v. FCC*, 373 F.3d 372, 2004 U.S. App. LEXIS 12720, June 24, 2004.

The reason is simple: maintaining a single news crew to produce news programming that can be broadcast over several outlets is cheaper than maintaining distinct news operations on different stations. Also, simply purchasing a news product from a subcontractor or outside vendor is cheaper than maintaining an in-house news crew. Thus to achieve economies of scale, the massive group owners that now dominate the broadcast industry will always choose the elimination of local news operations where they have the ability to share news personnel and/or product among their different commonly-owned and operated outlets, both within a market and even over multiple markets. In that competitive setting, non-group owners are forced to cut costs to compete which often results in outsourcing of news and the resultant elimination of independent perspective.

Without local newscasts, genuinely local news events, such as school board meetings or city council hearings do not get covered. There is a dearth of coverage of issues affecting minority communities, and local perspectives on national issues and events simply go unreported. The incentives inherent in an unregulated, market-driven broadcast market are simply antithetical to the promotion of truly local, community-responsive programming.

For example, in New York City – the #1 local radio market nationwide – there are only two all news radio stations (WINS-AM & WCBS-AM), and both are owned by Viacom.<sup>2</sup> Viacom through its ownership interest in Westwood One, also controls Shadow and Metro Networks - the major providers of news and traffic programming on most of the music formatted stations in the NY market. As a result, a single corporation is effectively controlling the vast majority of radio news provided in the nation's largest

market. As another example, Inner City Broadcasting, which owns WBLS, an R&B station, used to maintain a full news department with approximately eleven (11) full-time anchors and reporters. Inner City recently terminated these veteran news professionals and replaced them with just one news anchor for the AM shift and another for the PM shift. Clear Channel similarly recently terminated its last full time newsperson on a NYC music station -- WLTW.<sup>3</sup> The result is that there is less local news coverage, from fewer stations, in New York overall.

In Chicago, the availability of news on the local radio is even scarcer. Westinghouse-owned WMAQ-AM had been an all-news station since 1989. Westinghouse bought CBS and later merged with Viacom in the 1990s. The merged company's radio division, Infinity, also owned the all-news format station WBBM-AM. In 2000, Viacom/CBS/Infinity determined that it was no longer profitable to compete against itself, so it shut down WMAQ-AM. Because WMAQ-AM and WBBM-AM were the only all-news format stations in Chicago, when Viacom killed WMAQ-AM, it was killing WBBM-AM's only competition, leaving Chicago with only one all-news radio station. Although these moves may have been highly profitable for Infinity, they were hardly in the public interest. Though some news may be available on other radio stations to a lesser degree, many of the remaining stations in Chicago are owned by Infinity, or receive news-reports from Shadow/Metro – Infinity's corporate sibling through Viacom.<sup>4</sup>

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<sup>2</sup> There is a third all news radio station, Bloomberg, which concentrates on financial news.

<sup>3</sup> Similarly, in St. Louis, Missouri, there are only two AM stations and one FM station that produce original news programming. In San Francisco, Clear Channel and Infinity control almost 50 percent of the radio market share, with Infinity airing the same local news programming on its different stations in the market and surrounding areas, such as with KBAY-FM in San Francisco and KBAA-FM in San Jose.

<sup>4</sup>Infinity (WJMK and WBBM-FM/B96) and Clear Channel (WNUA) recently terminated their remaining news personnel, leaving virtually all the radio stations in the Chicago market now reliant upon Shadow/Metro for the delivery of news product.



Historically under-served communities have been hit even harder. Prior to 2003, WADO-AM, the only Spanish language news/talk station in New York, was owned by HBC, Inc. At that time, WADO-AM maintained a full news department with three local reporters, a morning news show, and live two-times an hour, 5 minute news casts and a half-hour mid-day news show. In addition, WADO-AM employed local talk show hosts, who provided an outlet for local communities and politicians. Since Univision took over WADO-AM in late 2003, the station fired all of its local reporters and eliminated all local programming except for a 3-hour morning newscast and a one-hour evening sports show. In fact the Company now pre-records its 5-minute hourly newscast. All other programming is syndicated programming. The Hispanic community in New York no longer has the continuous source of news and public affairs information that WADO used to provide. Now, the Spanish language listener in New York has nowhere to turn for news and information.

The situation with television news is not much better. In market after market, AFTRA has seen companies acquire stations and then close or consolidate television news operations. In New York, the two Fox stations (WNYW-TV and WWOR-TV) now share one News Director. In St. Louis, Missouri, a Sinclair station, KDNL-TV, closed its news operation in 2001 (with a loss of 20 positions) and it has not been replaced completely eliminating a source of local news in that community.

In the Commission's Localism Task Force Public Hearing on Localism held in Monterrey, California, on July 21, 2004, AFTRA National President John Connolly gave other examples of this trend, including the effect of Viacom's news consolidation in Seattle, Washington. As Mr. Connolly recounted, in 1998, Viacom dismantled its news

operations at KSTW-TV saying that “there [was] more than enough news programming” in the market. More recently, however, Viacom announced that the station (a UPN affiliate) would begin airing newscasts produced by KIRO-TV, the CBS affiliate in Seattle. As Mr. Connolly explained, “[a]lthough a separate company owns each station, the affiliated stations’ networks are commonly owned. Rather than resume providing its own newscast that would compete with other news in the market, Viacom chose to maximize its profit margin by re-broadcasting content that is already available on Seattle airwaves.”<sup>5</sup>

Similarly, such cross-pollination of news operations has occurred nationwide with the duopolies created by the CBS and UPN and the NBC and Telemundo mergers. In Chicago, where GE owns WMAQ-TV (NBC) and WSNS-TV (Telemundo), reporters work off of the same assignment desk, share camera crews and footage, and report with a fair amount of interchange. The NBC/Telemundo duopoly has resulted in similar arrangements in Miami, Los Angeles, San Francisco and in other markets. For the bilingual communities in these markets, there are no longer separate and distinct editorial perspectives presented on these commonly owned stations.

Sinclair Broadcasting has recently introduced a new form of local programming replacement, which it calls “central casting,” wherein Sinclair will tape a generic news program in Hunt Valley, Maryland and, masquerading the on-air talent as a “local news” team, broadcast it in many of its sixty two (62) television stations in thirty-nine (39)

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<sup>5</sup>Testimony of AFTRA National President John Connolly at the Localism Task Force Public Hearing on Localism held in Monterey, California, on July 21, 2004, [http://www.aftra.com/legislative/docs/monterey\\_fcc\\_connolly\\_testimony.html](http://www.aftra.com/legislative/docs/monterey_fcc_connolly_testimony.html); See John Levesque, *Brought to you by KIRO, news on KSTW*, Seattle Post-Intelligencer, Dec. 31, 2002 ([http://seattlepi.nwsourc.com/tv/102107\\_kstw31.shtml](http://seattlepi.nwsourc.com/tv/102107_kstw31.shtml)).

markets nationwide as local news.<sup>6</sup> This new programming plan is nothing more than the television equivalent of voice tracking. By broadly implementing this new broadcast business plan which is made possible by ownership consolidation, Sinclair has taken the first step towards elimination of local news and weather production in all of its television stations nationwide, and replacing that critically important local community resource with generic news produced in a locale far away from the communities that it is licensed to serve.

Thanks to loosened ownership limits and local marketing agreements (LMAs), Sinclair operates a number of stations in many markets, resulting in even greater impact on these communities. In another example, the same newscast that appears on WSYX-TV in Columbus, Ohio airs on WTTE-TV in that same market. Because Sinclair operates multiple stations in 21 of the markets in which it does business, the impact of this recycling of content is substantial.

This business model not only deprives local communities of genuine coverage of local community life, but it endangers public safety. In the event of a weather emergency, local stations won't have meteorologists on staff who are familiar with local geography or who can respond to inquiries that come into the station - leaving communities without any viable source of information or guidance. Similarly, in other community emergency situations including those involving terrorism or crime, there is little chance that a broadcast station with this type of generic programming will be able to receive and transmit timely emergency information. In this model of broadcast business "efficiency,"

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<sup>6</sup> Jim Rutenberg and Micheline Maynard, *TV News That Looks Local, Even if It's Not*, New York Times, June 2, 2003.

local communities are deprived of local station personnel who can report on and respond to genuine local events and local emergencies.

Finally, in Kansas City, KCTV replaced its three on-air sports reporters with an outsourced Metro Sports reporter showing that television is not immune from the pattern set in radio whereby almost all “local” news coverage is provided by an outside service – most likely Metro/Shadow. This powerful subcontractor operates without traditional newsgathering capabilities. It maintains a lower compensated, under-resourced and, in many cases, less experienced staff than traditional news operations and it holds no broadcast license and therefore cannot be held accountable for any obligation to serve the public.

#### B. The Quality of Local News Has Suffered

Not only has the quantity of local news programming been slashed, but the quality has suffered as well. This was confirmed in a survey recently chartered by the leading associations of news professionals: AFTRA, the CWA-TNG, NABET, and WGA East.<sup>7</sup> This survey was taken of a broad cross section of print and broadcast news professionals and the participants overwhelmingly agreed that there has been a seismic shift in their industry, wherein both the quantity and integrity of local and national news coverage has dropped. The survey highlights the overwhelming emphasis on cost cutting and revenue enhancement, resulting in little focus on complex issues and an ever-growing influence of ratings or circulation on coverage and programming.

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<sup>7</sup>Lauer Research, “*Media Professionals and Their Industry. A Survey of Workers and their Attitudes about: The State of Journalism and Broadcast News; the Impact of Media Consolidation on their Profession; the Likely Consequences of Further Media; and Concentration Under New FCC Rules*” 2004, <http://www.aftra.com/legislative/docs/media%20workers%20poll.pdf>.

When asked to predict the likely impact of further deregulation, 80% noted that it would likely be negative:

- 86% cited less diversity of viewpoints in local news coverage
- 86% thought control of news and programming decisions would be concentrated in too few corporate hands
- 79% predicted growing corporate bias in the news, and
- 78% feared a general, continuing decline of news quality

75% of those surveyed have worked in the media field for more than 10 years and more than 50% have been affected directly by changes in ownership due to consolidation within the past five years.

The results of this survey are not unique. The same concerns have been documented in similar surveys conducted by other organizations, including the Pew Research Center.<sup>8</sup> In short, what little remains of local news operations in the broadcast media does not provide local communities with the diversity of views and breadth of meaningful insight that is essential in our democracy.

C. Public Affairs and Cultural Programming, Including  
Programming for Under-served Communities  
Is Disappearing From Broadcast Markets Nationwide

Following the Commission's relaxation of station public service requirements in the mid 1990's, and particularly in recent years owing to the pressures of market forces, local communities have lost public service programming that once galvanized and brought together local communities. Again, the evidence is clear, as a result of market

forces exacerbated by excessive media ownership consolidation, public affairs and local cultural programming, including programming that was historically directed towards under-served communities, has disappeared from broadcast markets nationwide.

In New York City, just six years ago, there were distinct public affairs programs on each of Clear Channel's five (5) stations in that market and several public affairs directors for these stations. Clear Channel has since fired each of these public affairs directors and has virtually eliminated public affairs programming from all of its channels. Public affairs and local news has been virtually eliminated from New York music formatted radio stations. Three years ago in Boston, there was uproar in the local community when WHDH-TV (the local NBC affiliate) announced that it was canceling all six (6) of its public affairs programs. After a strong reaction from the minority community, the station relented and kept one (1) of its six.<sup>9</sup> However, the struggle to maintain this show continues.

An essential part of the public service obligations of television and radio stations is to provide community responsive programming to the local communities the stations are licensed to serve. In the current climate, with no clear regulatory requirements to provide such a service and no meaningful penalties for non-compliance, broadcast stations are failing dismally to comply with this fundamental statutory obligation. As AFTRA National President John Connolly stated at the Monterrey Localism Hearing, "to the extent public affairs programming is categorized by the FCC as 'community-

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<sup>8</sup> *Strong Opposition to Media Cross-Ownership Emerges*, (July 13, 2003) <http://people-press.org/reports/display.php3?ReportID=188>; *Bottom-Line Pressures Now Hurting Coverage, Say Journalists*, (May 23, 2004) <http://people-press.org/reports/display.php3?ReportID=214>

<sup>9</sup> See "Ch. 7's Change of Heart: 'Urban Update' Gets A Reprieve, But the State of Public Affairs Programs Remains Uncertain." Boston Herald, October 28, 2001, [www.bostonherald.com/entertainment/television/tvco10182001.htm](http://www.bostonherald.com/entertainment/television/tvco10182001.htm); "Local Program Cutbacks are a Sign of the Times," Boston Globe, October 23, 2001, [www.boston.com/dailyglobe2/.../local\\_program\\_cutbacks\\_are\\_a\\_sign\\_of\\_timesP.shtm](http://www.boston.com/dailyglobe2/.../local_program_cutbacks_are_a_sign_of_timesP.shtm)

responsive,’ the complete dearth of such programming absent a regulatory requirement illustrates the failure of a voluntary system.

### **III. BROADCAST STATIONS ARE FAILING TO SERVE THE INTERESTS OF LOCAL COMMUNITIES IN DEVELOPING AND PROMOTING LOCAL ARTISTS AND FOSTERING LOCAL MUSICAL GENRES**

#### **A. Group Station Owners are Killing Musical Diversity and Innovation Through “Voice-Tracking” and “National Playlists”**

In recent years, greater numbers of group broadcast owners have implemented “voice-tracking” and “national playlists” approaches that serve to completely obliterate the connection between local communities and the development of American musical culture.

Voice-Tracking: As we have detailed in previous filings, “voice-tracking” refers to a technology used by Clear Channel, the largest group owner of radio stations in the United States, whereby live and local broadcasts are replaced with airshifts pre-recorded in remote locations. In addition to the impact on coverage of local news and a station’s ability to provide timely and accurate emergency response coverage, voice tracking also has a significant impact in the music arena. Clear Channel has its announcers pre-record liners and announcements and the music is spliced in later. These programs are then aired several days or even weeks later in cities and towns far away from where the airshift was recorded as “local” programming.

Although voice-tracking may have begun as a way of promoting “popular out-of-town personalities” to local communities, Notice ¶ 38, the practice has evolved into a crass form of cost cutting that simply eliminates live local broadcasts altogether, depriving local communities of local talent and responsive local programming. Contrary

to Clear Channel's assertions, voice tracking does not import big name talent into smaller markets; rather, it imports cheaper announcers from smaller markets into larger markets, including all of the top three markets at one time or another.<sup>10</sup>

Voice-tracking has not only resulted in the loss of hundreds of disc jockey and announcer jobs at stations nationwide,<sup>11</sup> but in many communities, there are stations programmed completely with voice-tracked or automated material with no local personnel at all.<sup>12</sup> The end result is undeniable - no local flavor, no local input, no local jobs, no local coverage and no local connection. It is axiomatic that these practices do not serve local communities.

Clear Channel's use of voice-tracking relies on deception in order to pay lip-service to the value of localism. By doctoring up their voice-tracked air shifts, Clear Channel attempts to deceive local audiences into thinking that they're listening to live and local radio. As the Wall Street Journal reported last year, voice-tracking announcers use 'cheat sheets' to clue them in to local places, events and pronunciations.<sup>13</sup> Clear Channel also records request and dedication calls, so that they can air the calls later in other markets. So, if a listener calls a Washington DC oldies station to request that a local disc jockey play a Stevie Wonder song for his wife on their anniversary, that telephone call may later be aired in Detroit or some other market, without disclosure that

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<sup>10</sup> While up to 70% of Clear Channel's radio broadcasts are voice-tracked in markets of all sizes, the impact is magnified in smaller markets with even fewer outlets.

<sup>11</sup> Voice-tracking has resulted in the loss of jobs at Westwood One in Los Angeles, California, at KIHT in St. Louis, Mo., and in countless other smaller markets where Clear Channel has replaced live and local radio with automated or voice-tracked programming.

<sup>12</sup> In Miami, for example, there are stations such as Party 93, where all local staff have been terminated and all shifts are now filled by voice tracked programming originating in other cities.

<sup>13</sup> Anna Wilde Mathews, *Clear Channel Perfects the Art of Sounding Local*, Wall Street Journal February 25, 2002



the call was not a call from that location. Local communities are not well served by radio shows that are built on deception.

There is obviously a value to making national programming available. Radio is all the richer for its history of syndicated national radio shows. However, the misrepresentations and falsifications inherent in Clear Channel's voice-tracking system are quite a different matter. In the Clear Channel behemoth, entire radio stations are operated without a single live, local announcer and local communities are intentionally led to believe otherwise.

National or Regional Playlists: A national or regional "playlist" refers to a uniform list of songs played on local radio stations as mandated by station group owners. These playlists are compiled and maintained by corporate management and consultants with minimal input or participation by local station staff or local communities. Such centrally mandated playlists deprive local stations of the ability to discover and promote new local artists, who then do not have the opportunity to gain airplay or wider exposure. As a result, the diversity and types of music heard on the radio and then embraced by the public are diminished.

Traditionally, local radio stations and local disc jockeys fostered local artist development and the growth of unique local musical genres by gauging and responding to community tastes, trends and novelties. Artists have historically used their success in local markets as a stepping-stone to "break" into the national scene. Indeed, the distinctive "American" musical sounds that make up the rich American musical experience actually began as local and regional sounds: New Orleans jazz, the Detroit sound, the Philly sound, "Tejano" music, Seattle "grunge" and "East Coast" and "West

Coast” rap and hip hop. In the new broadcast economy, disc jockey jobs have been eliminated and local music stations no longer play a role in introducing new local talent to their communities and the country. Instead, local communities are offered only “voice-tracked” programming taped in locales with no connection to the communities served, and national or regional “playlists” compiled in corporate board rooms without any local audience participation or input. One can only predict that those playlists will become even more rigid in the wake of increased corporate concerns about increased FCC fines on material deemed “indecent.”

It is the experience of sound recording artists nationwide that the absence of individual station personnel accountable to local communities is one of the major obstacles to getting records played in their local communities and has resulted in a loss of community responsive music radio programming.

**B. Local Communities Have Lost Access To  
Local Artists and Diverse Local Music Genres**

Substantial evidence has also been submitted to the Commission on how market forces in the new broadcast economy have led local music stations to abandon their roles of introducing and promoting local new talent, and fostering diversity in musical styles and culture.

In the Commission’s Localism Task Force Public Hearing on Localism held in San Antonio, Texas on January 28, 2004, AFM International Executive Officer Ray Hair described two telling examples of how local communities have lost valuable community music experiences as a result of decisions made by broadcast station ownership.<sup>14</sup> The

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<sup>14</sup> Testimony of Ray Hair Before the Federation Communications Commission Localism Task Force Public Hearing on Broadcast Localism, San Antonio, Texas, January 28, 2004 (hereinafter “Ray Hair Testimony”).

first example involved KKDA-FM in the Dallas-Forth Worth area. In the late 1980's and early 1990's, KKDA was sufficiently intrigued by a local live music event, the Denton Jazz Fest, to air live, full-day broadcasts of the festival for approximately six years running. During that time, the festival attendance grew to 10,000 and many talented new local artists reached audiences on the air. But that sort of local programming is a thing of the past. As Ray Hair said in his prepared testimony, "It was a great thing for local music. I don't know of anything like it in Texas anymore. There just isn't that kind of local programming commitment."<sup>15</sup>

In his second example, Ray Hair recounted that in Dallas, the AFM Local had traditionally booked musical performances for a three-day festival entitled "Taste of Dallas," and those bookings had played an important role in promoting local and regional artists. But in 2001, local Clear Channel stations conditioned their radio promotion of the festival upon the festival booking the headliner acts exclusively through another Clear Channel business, Clear Channel Entertainment. As a result, the local community lost much of its influence over the festival, and local and regional artists lost many of the performance slots to non-local acts that Clear Channel wanted to promote. As Hair explained, vertical integration in radio ownership can lead to music station owners to defeat localism even when they do sponsor local music events.

Additionally, market forces have led to the elimination of certain music formats from local communities. For example, over the past three years, the New York City community has been losing music formats. New York lost WNCN, one of the two remaining classical music stations. Now, WQXR is the only classical radio station in New York City. The country music and "music-of-your-life" formats are also now gone

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<sup>15</sup> Id. at 4-5

from the New York City community. As these music formats disappear, they are lost forever.

In a study commissioned by the Future of Music Coalition (FMC), previously submitted to the Commission, the FMC documented that consolidation in broadcast ownership has caused playlists to become shorter and more homogenized, causing a significant drop in the diversity of music broadcast on radio.<sup>16</sup> For example, this study demonstrated that radio companies regularly operate two or more stations with the same format in the same geographic market. Also, it found 561 instances of format redundancy nationwide, amounting to massive missed opportunities for format variety, which might, in turn, enhance programming diversity.<sup>17</sup>

Ray Hair also discussed this trend, describing how “Tejano” music in Texas has been marginalized in recent years by the preponderance of homogenous nationalized playlists, and, despite its “explosion” of popularity in the early 1990’s, is now at risk of completely losing any airplay presence.<sup>18</sup>

The Commission asks what steps could be taken to protect localism in this area, and the answer is clear. Apart from re-consideration of the broadcast ownership rules, particularly as they relate to radio, the Commission should require every station licensee to obtain programming input from the local community it is licensed to serve and to document, in a detailed standardized form kept in its local public inspection file, the true nature of its programming, all efforts to involve the local community in the

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<sup>16</sup>Peter DiCola and Kristin Thomson, Future of Music Coalition “*Radio Deregulation: Has It Served Citizens and Musicians? A Report on the Effects of Radio Consolidation following the 1996 Telecommunications Act*” November 18, 2002, <http://www.futureofmusic.org/research/radiostudy.cfm>

<sup>17</sup>Id.

<sup>18</sup>Ray Hair testimony, supra, at 5.

programming, and all efforts to promote local sound recording artists. See Section IV below.

C. Artist Careers Are Being Destroyed by New Payola Practices that Prevent Local Artists From Gaining Airplay

Another insidious result of our currently over-consolidated broadcast marketplace is that media owners are in a unique position to obtain payments and other forms of consideration, both direct and indirect, in exchange for giving airplay to artists. While these newer practices clearly fall within the ambit of activity sought to be prohibited by Sections 317 and 507 of the Communication Act and the Commission rules regarding payola and sponsorship identification,<sup>19</sup> the Commission should act to adopt new rules to address the more complicated compensation schemes employed in the modern radio industry that ultimately result in how music is selected for broadcast by licensees.

In response to the specific questions posed by this Notice, ¶ 35, AFTRA and AFM submit that recording artists are experiencing at least three (3) types of “pay for play” practices and these practices are well-known and widespread in markets of all sizes nationwide.<sup>20</sup> These practices have arisen because of the dominant market power of group station owners, who own not only thousands of stations nationwide, but also concert venues and concert promotion companies. The market power of these vertically and horizontally integrated market players is overwhelming, and, as a result -- whether

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<sup>19</sup> Sections 317 and 507 of the Communications Act of 1934; “Payola Public Notice,” 4 FCC Rcd 7708; 47 C.F.R. §73.1212.

<sup>20</sup>In *Nobody in Particular Presents, Inc. v. Clear Channel Communications*, 2004 US Dist LEXIS 5665 (D. CO 2004), the court found "evidence that, through the covert use of "indies" and concert promotion services contracts, Clear Channel may actually be selling airplay."

unintentional or by design -- the modern broadcast licensee is able to create and benefit from de facto “pay for play” arrangements at the expense of artists and the public interest.

First, sound recording artists report that they are unable to have a record played on local stations unless they contact -- and pay -- a so-called “independent (‘indie’) promoter” to promote their records to specific stations. Reportedly, certain indie promoters use this money to pay the stations for putting songs on the air.<sup>21</sup> Some group station owners have taken this arrangement one step further, and entered into exclusive arrangements with independent promoters, who then guarantee a fixed annual or monthly sum of money to the station owner.

Station owners argue that these payments do not constitute “pay for play” because the payments are not made “in exchange” for airplay, but, instead, ostensibly, for the right to receive “first notice” of a station’s playlist “adds,” or for some other illusory reason. It is undeniable, however, that the station group owners that have such exclusive arrangements with promoters also tend to maintain playlists with songs recommended by these promoters. While perhaps not as direct as the classic cash payment to a disc jockey, this type of arrangement is just as deceptive to local community audiences and just as unfair and destructive to musical artists and the development of music.

Second, sound recording artists complain of being pressured to provide indirect compensation to station owners, in the form of compelled performances. In this situation of wildly disparate bargaining power, group station owners will pressure artists to perform free concerts at events sponsored by the station owners, or perform at station events at substantially discounted rates, at the risk of loss of airplay. Similarly, artists

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<sup>21</sup>See Eric Boehlert, “Pay for Play,” Salon.com, March 14, 2001 (<http://dir.salon.com/ent/feature/2001/03/14/payola/index.html?sid=1018446>)

report being pressured to perform at venues owned by particular station group licensees and not perform at competing venues. As station owners are well aware, sound recording artists in the present marketplace cannot afford to refuse such demands, as they would consequently risk their records not being played on any of a licensee's outlets -- which could number in the thousands nationwide.

Third, along the same lines, artists report that they are pressured to hire concert promoters associated with licensees. For example, at the San Antonio Localism Hearing, AFM International Executive Board Member Ray Hair described how an artist who was dependent upon Clear Channel to broadcast her recordings was forced to cancel a booking because Clear Channel insisted that she appear instead at a competing event promoted by Clear Channel.<sup>22</sup> Also, evidence of this type of industry pressure on artists was well documented in the Nobody in Particular Presents case.<sup>23</sup>

Record labels, promoters, and station owners respond that these latter practices do not run afoul of existing anti-payola or solicitation rules because there are no direct payments made in exchange for airplay. However, the demand for an artist's performance for which the artist would otherwise be paid is clearly a demand for a type of consideration. Further, it is disingenuous for a broadcast licensee to claim that where such a demand (or request) is made, a licensee's overwhelming broadcast market control does not operate to -- at the very least -- imply the denial of airplay as a consequence for non-compliance. Also, where music station licensees also own other entertainment

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<sup>22</sup>Ray Hair Testimony, p. 4.

<sup>23</sup>Nobody in Particular Presents, 2004 US Dist LEXIS 5665 (finding "evidence of a pattern and practice of behavior by Clear Channel whereby Clear Channel lessens radio air play for artists booking with [Clear Channel's competitor]" and evidence "that Clear Channel intends to manipulate artists' promotion decisions and interfere with competitors by withholding air play"). This decision presents a thorough description of these practices and is a "must read" for anyone wanting to understand modern day payola and the types of practices, which must be forbidden.

businesses (such as local concert venues and concert promoter agencies), it is undeniable that the resulting market power of such station licensees can lead only to such station licensees exerting an unacceptable level of control over artists' options and choices.

The exercise of such market control for the compensatory benefit of a broadcast licensee is payola by any definition. Just like the more classic forms of payola, these newer forms of "pay for play" arrangements result in licensees being directly or indirectly compensated by artists and labels who expect that such compensation is necessary to secure airplay. This situation also results in local community taste and preference and artistic merit not being the criteria for the selection of music broadcast by licensees – a result that is contrary to interests of local communities, devastating to the careers of artists, and ultimately, will destroy the development of American music.

The Commission needs to issue new rules that clearly prohibit both direct and indirect forms of compensation to broadcast licensees from labels, artists, any entity promoting the interests of labels and artists, or anyone who evaluates, suggests, promotes, or has any input or influence on recordings broadcast, unless such payment is made for paid advertisement on the station, which would then be subject to disclosure under the current sponsorship rules.

Moreover, the Commission must also prohibit licensees from considering, when making broadcast programming decisions, whether or not an artist or other programming or content provider has entered or refused to enter into a contract or other arrangement with an entity affiliated with the licensee, or in which the licensee has an attributable interest, that offers concert venue or concert promotion services.



Further, a broadcast licensee's performance in this area must be addressed in a standardized form that licensees must be required to complete and keep in their public disclosure files, and on the Internet for public access, for review by the Commission in evaluating license renewal applications. See Section IV.

**IV. THE COMMISSION MUST ISSUE NEW RULES TO MANDATE THAT LICENSEES ABIDE BY THEIR STATUTORY OBLIGATIONS TO SERVE LOCAL COMMUNITIES, AND THE COMMISSION MUST STRENGTHEN ITS LICENSE RENEWAL PROCEDURES TO ENFORCE THESE RULES**

In this regulatory vacuum, the Commission must issue new rules to compel broadcast licensees to provide genuinely local, community responsive programming and to avoid even the appearance of engaging in unlawful and destructive "pay for play" practices. Further, upon penalty of license forfeiture, broadcast licensees should be required to document its efforts to comply with these requirements.

Consistent with the proposal set forth in the Enhanced Disclosure Notice,<sup>24</sup> the Commission should issue a new standardized form wherein licensees would be required to detail, on an annual basis: (i) the percentage of original programming produced locally, (ii) how much of "locally produced" programming is subcontracted, and (iii) how much programming is produced by the local station. Such information should also be broken down into type of programming, i.e., news, talk, public or cultural affairs or music. Licensees should also be required to identify and document the percentage of programming that is syndicated, central-cast, 'hubbed', voice-tracked, or automated, as well as what percentage is produced locally or sub-contracted. Finally, licensees must be

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<sup>24</sup> Enhanced Disclosure, Notice of Public Rulemaking, 15 FCC Rcd 19816,

required to document any and all “pay for play” arrangements or payments as well as all efforts made to encourage and promote local artists.

As was previously required, at the time of license renewal, a station should be required to give notice of its license renewal application to the public, by making regular on-air announcements, so that the public has the opportunity to review the public inspection file containing the disclosure form and provide comments to the Commission. Licensees should be mandated to give regular, periodic public notice of the existence of their public files, and should be required to make its public file accessible on the Internet so that the public can access it easily.

Finally, the Commission must enforce existing and new rules with the penalty for non-compliance being the forfeiture or suspension of a license. At present, there is little penalty for violations of many of the Commission’s rules. As an example, Section 73.1208 of the Commission’s regulations relating to broadcast materials provides, in part, that “[a]ny taped, filmed or recorded program material in which time is of special significance, or by which an affirmative attempt is made to create the impression that it is occurring simultaneously with the broadcast, shall be announced at the beginning as taped, filmed or recorded. The language of the announcement shall be clear and in terms commonly understood by the public.”<sup>25</sup> Clear Channel stations that air voice-tracked programming have never made such a disclosure in conjunction with their broadcasts. Their business plan plainly relies on deceiving listeners into believing that a broadcast is live and local. The Commission must consider whether these disclosures have been made when reviewing license renewal applications.

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<sup>25</sup>47 C.F.R. 73.1028(a)

The Commission should also take action to curb use of “local marketing agreements” to subvert what few ownership regulations remain. When an owner like Sinclair operates multiple stations in a single market, it invariably re-broadcasts the same newscast on both of its signals. Local communities should not be deprived of having access to additional independent sources of news and information; LMAs provide an incentive for media owners to recycle and re-purpose content, rather than enterprising new content.

In the current broadcast market, broadcast licensees will only be held accountable to the local communities they are licensed to serve by strict regulatory oversight, ultimately culminating in the threat of license forfeiture.

#### **V. THE COMMISSION SHOULD ADDRESS THE CRISIS FACING MUSICAL ARTISTS BY AUTHORIZING ADDITIONAL SPECTRUM ALLOCATIONS**

The Commission seeks comment on what additional steps we could or should take to promote LPFM further. AFTRA and the AFM support the recommendations of commentators the Future of Music Coalition and others and incorporate their comments herein.

#### **VI. CONCLUSION**

Broadcast stations are no longer serving the needs and interests of local communities and, in many cases, don’t even feel an obligation to do so. Local communities, individual artists, and our cultural and democratic values and society are the worse for this widening disconnect. Market forces will always sacrifice artistry,

creativity, and local community needs to the financial interests of media owners. One of the few remaining avenues to cost savings for over-leveraged, stock market driven, consolidated media conglomerates is the stripping away all of the local elements of broadcast, -- a singular goal antithetical to the principles of localism.

The Commission should adopt rules to specifically require stations to provide public service programming responsive to the needs of the particular communities where the station is located, and stations must be required to document their compliance with this requirement in their public inspection files. Specifically, stations should be required to document how local news was covered and its efforts to promote local artists. Further, these files should be available to the public and should be reviewed at least at the time that a station applies for a license renewal, with non-renewal as the penalty for non-compliance.

Market forces do not encourage, and in fact, discourage, broadcast stations from airing programming responsive to community needs. The Commission must adopt new rules requiring stations to serve local communities, and enact meaningful license renewal procedures that hold broadcast stations accountable to the local communities they are licensed to serve. Only then will we begin to reverse the erosion of our media industry once the envy of the free world.

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